will be reprinted in this town, and then our readers can judge for themselves of its character and profit by the various talent it displays.

ART. XVII—*Report of the Committee, who were directed to take into consideration, whether any, and if any, what measures ought to be adopted, in consequence of the state of things resulting from the separation of Maine from this Commonwealth, with leave to report by bill or otherwise.* Boston, 1820.

THE act of the last session of the General Court of Massachusetts, relating to the calling of a convention of delegates of the people for the purpose of revising the constitution, is frequently spoken of as an assumption of power, which can be justified only because it was necessary. This reason, or rather this apology for giving no reason, has of late years become too common. It is ordinarily designed by those, who use it, to conceal their real motives, or to save the trouble of explaining them; and they often succeed in stopping with it the mouths of their adversaries; but when urged by men not satisfied with mere words, to show to what end the measure they vindicate is necessary, and how it is so, they are sometimes driven to the confession of motives, which do them little honour, or to the allegation of pretexts, which are almost ludicrous. If a powerful nation attacks a faithful and unsuspecting ally, sets his capital on fire, and robs him of his navy, it is necessary. But why?—To prevent the danger of his being robbed of it by his enemies. When a military sovereign invades nation after nation without a pretence of right, it is necessary—for his fame. And to descend to humbler instances, should banking corporations, after obtaining an extensive credit by the general circulation of their notes, refuse to redeem them, and set their creditors at defiance, at the same time declaring dividends of their profits, thus acknowledging that their property was more than sufficient to pay all their debts and to replace their capital, what name should we give to their conduct, if they did not find a justification for it in the whimsical necessity of gaining twenty per cent. a year by the violation of their contracts? Or suppose it should by possibility happen that a particular class of

men, manufacturers for example, having increased in wealth and power so much more rapidly than the rest of the community, as to acquire in a few years an almost commanding influence in the national councils, demanded that tax after tax should be imposed for their emolument, without laying down before hand any system or principle, by which the amount of those taxes should be regulated, or proposing any limitation of them but their wants, increasing with every supply, and appeared to think all that had been granted them nothing, while any thing remained to their fellow citizens, who would not be surprized and indignant at their rapacity, if it were not necessary—for the promotion of national industry? In this last case we admit the professed object to be laudable, and do not doubt but the measures proposed have some tendency to accomplish it; for when enormous taxes are imposed on the public to support the great establishments of wealthy manufacturers, all other classes of society, such as farmers, tradesmen, and mechanics, oppressed as they will be by the burden, must be very industrious indeed to save themselves from starving.

It is not denied that a real necessity may exist for acts otherwise unjustifiable; but surely a people, who value their rights, will not suffer their public agents to shield themselves under the bare assertion of its existence. They will demand incontrovertible evidence of the fact, and listen to it with a jealous ear. This is the more requisite as the argument that any thing should be done, simply because it is necessary, is an admission upon the face of it that the measure is bad in itself; since if its necessity be the reason for adopting it, that reason failing, it ought not to be adopted; and what ought not to be done when it can possibly be avoided, is not a good deed.

Though the act we are examining has now gone into operation, and the people have decided under it that a convention shall be holden, it may be not wholly uninteresting nor useless to examine the grounds of its alleged necessity. By some this is thus maintained. Since the separation of Maine, there are only ten districts in the Commonwealth, and from these only thirty-one senators are chosen, whereas the constitution provides that there shall never be less than thirteen districts, and that there shall be annually elected by the freeholders and other inhabitants forty persons to be

counsellors and senators. Hence it is argued that the thirty one persons elected this year do not constitute the Senate, and had no authority to administer the oaths of office to the present governor, who of course cannot administer them to the next legislature nor they to his successor, so that no public officer can hereafter be constitutionally qualified to act, and thus the government is dissolved, and cannot be reorganized without a convention.

This argument is founded on the assumption that a literal compliance with every direction relating to the choice of senators is a condition, on which the existence of the Senate depends. That such assumption is in the present case erroneous, is manifest from the fact that by a subsequent article of the constitution provision is made for supplying the deficiency in the Senate in case forty persons should not be elected by the people. It is contrary to analogy and to all sound rules of construction to consider any regulation of the election as a condition essential to the being of the legislature, unless it is declared to be so by the constitution itself. 'The selectmen of the several towns shall preside and shall receive the votes of all persons qualified to vote.' If in a single instance they refuse to preside, or reject a legal vote, they may be punished, but the government is not therefore dissolved. So by the constitution of the United States, the Senate shall be composed of two senators from each state. Should any one state elect no senators, is the government of the Union at an end? Had one of the thirteen districts, into which the Commonwealth was divided, been swallowed by an earthquake or conquered by an enemy, the constitution would not, therefore, have been destroyed; though it would have become the duty of the legislature to divide the state anew; and omitting to do this seasonably would have been a violation of that duty. If forty members be essential to the Senate, suppose that the inhabitants of a single district should refrain from voting, or that a sheriff should lose or destroy the returns, or that a senator chosen unanimously should die or decline the office, we should be reduced to a state of anarchy; and thus the continuance of our government would depend on the fate or the caprice of an individual.

This is not the first time that the Senate has consisted of a smaller number than the constitution directs. For three successive years no returns were received from the district of

Dukes county and Nantucket, and of course but thirty-nine members were chosen to the Senate and but twelve districts represented in that body; and these were the three first years after the organization of the government. Yet the Senate and House of Representatives, in which were many who had been members of the convention for framing the constitution, and who must therefore have known its meaning and felt a strong interest in its faithful and successful administration, simply voted that it was inexpedient to fill the vacancy, and did not hesitate to assume legislative authority. According to this new doctrine, however, neither they nor any of their successors were duly qualified to exercise it; we have lived without government from that day to this; our whole statute book is a dead letter, and our judges and sheriffs, under colour of unconstitutional laws, have been all along committing false imprisonment, and robbery, and murder.

But though the actual deficiency in the Senate does not disorganize the government, it certainly renders it incumbent on the legislature to divide the Commonwealth, as it now exists, into new districts in conformity with the constitution. This instrument requires that forty persons be elected, that the number chosen in the several districts be in proportion to the public taxes levied in them, and that no district be so large as to entitle it to choose more than six. This last clause is supposed by some to be not merely a limitation of the number, which any one district may send, and a qualification of the preceding provisions so far as they would interfere with it, but a regulation of the size of the districts, and is relied upon to prove that a convention is necessary; for the town of Boston alone, it is said, is already so large as to be entitled to choose more than six senators, if the number assigned to each district be in proportion to its taxes. The obvious mode of surmounting this difficulty would be to divide the town into two or more districts, which, however inconvenient it might be, would put an end to this argument for the necessity of a convention. We are told, however, that the mode of voting prescribed by the constitution is such that a town cannot constitutionally be divided. Our answer is, that admitting the assertion to be correct, it creates no necessity for changing the frame of government. The argument amounts to this; the constitution requires impossibilities, and since impossibilities cannot be done, therefore it

must be altered. But it is easy to retort such reasoning; since impossibilities cannot be done, therefore they cannot be required. It is a solecism in terms to declare a town indivisible and at the same time direct that it be diminished; and the instrument, which does so contradict itself, is to the extent of that contradiction nugatory, though in every other respect still binding. When a constitution is carried into operation as far as it is consistent and practicable, it is faithfully and perfectly administered. The real difficulty seems to be that Boston is too large or too wealthy. The course of nature, or rather the providence of the Almighty, has made it flourish. Is this a violation of the constitution; and if it be, whose hand has committed it? Had the state never been divided, and the town of Boston gone on increasing till it paid more than six fortieth parts of all the public taxes, the same objection would have arisen, yet will any one pretend that the prosperity of the capital would have subverted the government?

Probably the clause referred to was designed simply to be a paramount limitation of the number of senators, which any one district might send, and not to determine the size of the senatorial districts. Such an opinion is supported not only by the uniform rule that every instrument should be so construed as to render it consistent with itself and give effect to all its provisons, but by the manner in which this clause was introduced into the constitution. While the instrument was under discussion in the convention, a member of that body proposed that some number of senators should be fixed which no county or district might exceed, and was himself appointed a committee to prepare such a restriction. Under these instructions the present proviso was written and reported, and it was immediately accepted as a compliance with them.

If this construction be correct, every rule of the constitution may be strictly carried into effect by making the town of Boston one senatorial district for the choice of six senators, and dividing the rest of the state so as to apportion the senators among the other districts in proportion to the taxes paid in them. And even if it be deemed erroneous, if the object of the proviso was to settle the size of the districts, and if a town be indivisible, still the same mode is a compliance with the constitution as far as it is consistent and practicable, and of course as far as it is obligatory. The number of

senators assigned to each district has never been in exact proportion to its public taxes, nor was it possible to make it so; yet no one has complained that this circumstance rendered a new constitution necessary. The act of the last session itself supposes that calling a convention is not a measure of absolute necessity; for it would be mere mockery to submit to the people a question which admitted but one answer. Had a majority of votes been against a convention, will it be pretended that the present frame of government could not have been carried into operation? and if it can be administered as it now exists, where is the necessity of changing it?

It is an imperfection in any instrument to contain contradictions, but not in every case a fatal one; nor is it always expedient to employ extraordinary means to remove it, unless it has a tendency to produce some practical mischief. Though a statute should contradict itself in terms; yet if the courts of justice in applying it construed it in such manner as to carry into effect the real intention of the legislature, it would not be necessary, nor perhaps wise, to repeal it.

Why then did the legislature undertake to submit this question to the people at all? Because its duty is to make all orders, laws and instructions, not repugnant to the constitution, which it deems conducive to the general welfare; and it is the right of the people, not repugnant to the constitution, to alter their frame of government whenever they think proper, and of course to decide at any time whether they will then alter it. Hence when the legislature judges it conducive to the welfare of the community, to submit this question to the people, it may and should do so, and facilitate as far as possible the expression and execution of the public will.

By the establishment of the state of Maine this Commonwealth is reduced to less than one seventh part of its ancient territory, and it is obviously a question worthy of consideration, by those who are competent to decide it, whether this great change of condition do not warrant some change in our frame of government, which may render it less expensive and unwieldy. Besides, the constitution is not now carried into operation according to its true meaning. It was originally designed that the Council and Senate should together consist of only forty members, and the mode established for supplying the places of those who should decline the first election was intended as an exception to the general

rule, and its object was to fill an occasional vacancy. But in practice the exception has taken place of the system, and for many years past forty-nine persons have been employed as counsellors and senators. If the Senate was wisely constituted at first, it can hardly be reasonable that it should now be so much larger, when the state itself is so much diminished. The quorum too is fixed at sixteen, the proper number while the whole body contained only thirty-one members, but not so now that it consists of forty. It is said to be inconsistent with sound principle for less than a majority of any legislative assembly to constitute a quorum; for then every quorum might organize itself separately, and thus two or more constitutional legislatures exist at the same time.

The other branch of the legislative body has also increased so much more than could have been anticipated, that from the towns contained within our present limits there may be chosen, there have actually been chosen, more than twice as many representatives as ever sat in any other legislature in the union. An enormous expense is thus incurred with no other effect, than to render the house a burden to itself, and to diminish in a surprising degree its diligence and its usefulness. How can we expect any thing like connexion or consistency in the laws when the House of Representatives may contain six quorums, and proceed to business every day in the week, yet no individual be twice present; when a bill may originate in one body, be discussed in another, and enacted by a third. The neglect of many towns to choose representatives has in general prevented the evils which must otherwise have arisen from their number. But this is evidently repugnant to the spirit of the constitution, and renders the representation grossly unequal.

For these and similar reasons many thought it expedient that a convention should be holden, many deemed it necessary, and there was good ground for the General Court to believe that the will of the people was in favour of the measure. If such were their will, it ought to be accomplished; if not, the peace and welfare of the community required that this fact should be known, so that no man hereafter might pretend, with the hope of being believed, that the government designed or desired to stifle the public voice. Should any one say that this amounts to a moral necessity, we shall not quarrel with the expression; we condemn it only when it is used as a sub-

stitute for reason, an apology for acts admitted to be wrong in themselves, and a mere cover for the hollowness of a rotten cause.

The General Court has been aptly compared to an agent, acting under special authority, and it has been asked what he ought to do if a case occurred, in which he was not empowered to act. It seems to us that he should do nothing, but refer the case to his principal, and inquire what he will have done. But suppose he has no express power to make the inquiry? This is no exercise of power, but a duty resulting from his situation as agent, and if it be his duty, surely he has a right to do it. So in government, when a question occurs, the decision of which involves the welfare of the people, and they have not delegated, but retain the power of deciding it, the legislature is bound to refer it to them as the only competent tribunal.

By the act, as first reported, it was provided that two thirds of the votes should be required to determine the question in the affirmative. In every society of equals a majority must of course decide all questions, where the society itself has not expressly adopted a rule requiring a larger number. This the people may do and have done, as in our own constitution, with regard to the question whether a convention should be holden in the year 1795; and some have contended that since the same reasons exist for the rule now as then, the people should and would have adopted it in the present case, had its occurrence been foreseen. This may be very true; but after all, the question recurs, have they in fact done it? if not, the legislature cannot do it for them. Let him, who thinks they have done it, lay his finger on the letter. We cannot find it.

The purpose for which a convention of delegates of the people is to be holden and which should be kept in view in all our speculations on the subject, is to revise and alter the constitution, not to make a new one; to remove doubts, prevent misconstructions, and correct abuses, not to polish and improve the style; to make it a better frame of government in practice, not a more ingenious, logical and connected treatise on the rights of man. We are to consider not what sort of a constitution should now be formed, but what provisions of that now existing may be usefully altered. However many excellencies our wise men might combine in a

new system, they could not give it that quality which does command and ought to command more than all others the confidence of the people, the sanction of time and experience.

The principal abuse which has crept into the administration of our government is the augmentation of the number of senators. This branch of our legislature has for many years been larger than the corresponding body in any other state. That of New York indeed formerly exceeded it, but in 1801 a convention was called principally for the purpose of diminishing the legislature, and the number of senators was then permanently fixed at thirty-two. Was not our own constitution as well administered, were not the rights of the people as faithfully guarded before as since the enlargement of the Senate? It is important that one branch of the legislature should be so small as to be exempt from the influence of appeals to the passions, and from the temptation to oratorical display; that each individual may be deeply impressed with a sense of his responsibility, may have an opportunity to express his opinion and the reasons of it with relation to every subject submitted to him, and may feel that they will be known and weighed by the public. Should the original number of thirty-one senators be re-established, the difficulty now existing with regard to their apportionment will for the present be removed, and its recurrence may be prevented by providing expressly that no town shall form more than one senatorial district, and no district send more than six senators, as was probably the original intent of the constitution. The council would then be chosen at once, as it now is ultimately, from the people at large, without the previous ceremony of electing senators in order that they may decline, and thus sending about the high offices of the Commonwealth to beg for occupants.

The principle by which senators are apportioned among the several districts is more frequently condemned than understood; and it is sometimes said by those ignorant of its origin to be a remnant of aristocracy. Now in truth nothing bearing the least resemblance to it existed under our colonial or provincial charter; but some of the most zealous and enlightened patriots of the revolution, having been led during that contest to a close investigation of the rights of man and the foundations of government, recommended the intro-

duction of this principle into our constitution, as establishing an exact equality of rights, and being the characteristic and security of a perfectly free republic. As those of our readers, who have paid no attention to the elementary principles of society, may not perceive at once the arguments which led to this conclusion, we shall recapitulate them briefly at the hazard of being tedious to those who are already familiar with them.

Before the establishment of social intercourse every man has a right to the exclusive control of his person and of the property which he has acquired by his labour, but has no other means of maintaining this right than his own strength and ingenuity, and is consequently exposed to the depredations of all who are stronger or more cunning than himself. Such, if it be not an abuse of language to give these names to rights so precarious, such are property and freedom in a state of nature. To obtain security for these rights, without which they are little more than nominal, men enter into society, and in so doing each individual yields to the community the right of controlling his person and property, so far as it is requisite for the welfare of the whole; and the equivalent which he receives, for without an equivalent the bargain would not be just nor binding, is the benefit derived by him as a member of the community from the same surrender on the part of every other individual. Were a society formed for the sole purpose of regulating the conduct of its members, without reference to their property, so that each surrendered to the whole the right of controlling his person only, it is obvious that all would make an equal concession, since the personal rights of all men in every condition are the same; and therefore all ought to receive equal benefit and have equal authority. A majority of individuals must then decide every question; for they must have a better right to do so where all have an equal voice, than any smaller number can have. But in associations established for the management of property alone, when different persons bring into the common stock different sums, the benefit which they derive from it and their power to control it ought to bear some proportion to their respective contributions. For if he who gives much to the common fund has no more right over it than he who gives little, they pay different prices for the same privilege, which is unequal and unjust. The natural rule in this case is, that

the holders of the major part of the property should decide all questions relating to its management. This principle influences the laws of every civilized community; it is adopted in most maritime codes, which provide that the majority in value of the owners of a ship may determine how it shall be employed; and it is carried to its full extent in the ancient and uniform system established in this Commonwealth for managing lands, wharves, and other real estate holden in common, by which at the meetings of the proprietors, each is entitled to vote according to his interest. What an outrage upon all principles of equality it would be that three persons, owning nine tenths of a common field, should have less right to enjoy and regulate it, than four, who owned the other tenth part? In banks, manufacturing companies, and other associations for the management of personal property in general, the same principle is enforced, but with such limitations as are requisite to prevent one or a few from obtaining the entire control of the whole institution.

In a community organized like civil society for the protection and regulation both of persons and property, every law affecting the personal rights alone of its members should be made by a majority of them; and every law relating merely to property ought to receive the assent of those who possess the major part of that property. Laws which affect both should have both these sanctions; and such are most of the laws of a civilized state. Those securing the possessions of the citizens are commonly enforced by penalties extending to their persons; and those regulating their conduct have ultimately an influence on their property. The possessors of property cannot make any disposition of it which may injure the personal rights of others, and the only way to enforce this restriction is to provide that they shall make no rule whatsoever concerning it without the concurrence of a majority of the citizens in number; so the majority in number can justly make no law disposing of property without the consent of those who possess the greater part of it.

The presumption that laws thus made will be just is as great as can ever be attained; for unanimity, which if attainable would obviously prevent the possibility of an unjust law, cannot be expected. But the perfection of a well constituted republic and its superiority to every other government lies in this. All laws must be general, binding the

whole people ; none can be made controlling the person or property of a particular man or class of men without their consent. Now it is highly improbable that a majority of the citizens would designedly establish unjust restrictions of the personal rights of all, because they, being themselves the most numerous, must suffer the most from them. It is equally improbable that the holders of the greater part of the property should make general laws injurious to property, because possessing more they must immediately suffer more than all the rest of the community. Here is a real, practical security. The best of us need restraint, and the surest means of inducing men in public or in private life to act justly is to make it their interest to do so. The perfect security of property is a benefit not only to those who now possess, but to all who seek to acquire it, and at once stimulates and protects enterprise and industry by protecting their fruits.

If indeed it were necessary that the whole powers of legislation should be committed to one of these bodies alone, no one would hesitate a moment to entrust them to a majority of the inhabitants of a state rather than to the holders of a majority of the property, because our personal rights are dearer to us than our possessions, and the former body would be less likely to abuse the power than the latter. But it is capable of mathematical demonstration that there is still less chance of the concurrence of both in any wrong measure, than of its adoption by either of them singly. According to the present system, each may prevent a law, but neither alone can make one ; and nobody can observe the intricacies of our statute books, the multitude of repealing, amending, restricting and explanatory acts, without feeling that the excess of legislation and not the want of it is the besetting sin of our country. Of what avail is it that the laws are stable in form, if in fact they are so constantly changing that no man can learn before hand how to regulate his conduct, if the rule of yesterday is abrogated to-day, and what was then a duty is now a crime ?

It must be recollected, however, that the senators are apportioned among the several districts according to their wealth, not directly and expressly, but only in consequence of the fact that public taxes are thus apportioned. 'The General Court, in assigning the numbers to be elected by the districts shall govern themselves by the proportion of the

public taxes paid by the said districts.' This consideration cannot fail to suggest to those, who know any thing of our history, another independent and powerful argument in favour of the present system, which was strongly urged by some members of the convention. The principle that no man's property can rightfully be taken without his consent, that in a free government taxation and representation are inseparable, was the very basis of the revolution. On this position the patriots of that day took their stand when they shook and broke the British empire; on this rock our independence was built. If the doctrine is untrue, if there is no essential connexion between taxes and representation, the ground they chose was false and hollow. Our ingenuity may perhaps discover other reasons to justify their conduct; but their reasons and their motives afford them no justification; out of their own mouths they are condemned; they were no better than lucky rebels; they covered themselves with shame, not with glory, and deserved a scaffold instead of a monument. This principle is adhered to in the constitution of the United States. Representatives, it is true, are assigned to the several states in numbers proportioned to their population; but taxes also are apportioned by the same rule; and when it was conceded to the Southern states in the spirit of conciliation, that in determining the numbers of representatives five slaves should be counted as three freemen, the inevitable consequence was not overlooked that then five slaves must be counted as three freemen in settling the proportion of taxes to be paid by the several states. These two rules were considered inseparable and adopted together. If the people of Massachusetts are ready to decide that taxes shall be apportioned among the several districts according to their population, then by the constitution as it now stands senators will be apportioned by the same rule. But they cannot wholly neglect, in the choice of legislators, the rules which they lay down for the imposition of taxes, without casting a foul blot on the memory of their fathers.

Such are the arguments adduced in favour of this part of our constitution by some of the members of the convention, which framed it. Nor is the principle confined to us. In New York it is provided that senators shall be apportioned among the several districts in proportion to the numbers of citizens contained in them having *real estate* of the clear

unincumbered value of one hundred pounds, and that no others shall vote in their election. With us the poor man has an equal vote with his richer neighbour, and the sole effect of our regulation is to give to those parts of the state, which pay most for the support of the Commonwealth, greater influence within a certain limit in one branch of the government. In South Carolina sixty two members of the House of Representatives are assigned to the several districts in proportion to their population, and as many more in proportion to their wealth.

For ourselves, however, we are free to confess that we place our chief reliance for the support of our present system, not on theoretical principles, nor on the example of others, but on the ground that it is in its actual operation a wholesome restraint on the exercise of the immense power intrusted to the legislature. It is the object of a constitution to limit and control the powers of every department of government and the sole motive for establishing two legislative branches is to make each of them a check on the other. Now this is not so effectually done, when both are chosen from the same body by the same rule; for in this case they must be exposed to the same influence and corruptible by the same means. But by requiring the consent of two assemblies constituted on different principles to every act, we diminish the power of both, and are more secure against encroachments. Both are in truth equally representatives of the people, if both are chosen according to a constitution which the people have established.

Another practical advantage of this system is that it tends to produce a just valuation of property and a just distribution of taxes. The inhabitants of the several districts are induced not to represent their property beneath its just value, because they would thus diminish their representation in the senate, nor beyond its just value, because their taxes would be thereby increased. Remove the former motive for estimating it at its full amount, you offer a temptation to fraud, which would endanger the safety of the state, and you immediately excite suspicions of fraud, which must disturb its tranquillity. But independently of all these considerations, it may be asked, if no inconvenience actually arises from the organization of the senate, and we are not aware that this is pretended, why go about to change it, thus shak-

ing the public confidence in the excellence of our institutions' and of course diminishing their stability ?*

The greatest practical evil which is found by experience to result from our frame of government is the unwieldy size of the House of Representatives, and the opinion seems to be now as general as it is just, that some remedy should be provided for it. The effect of diminishing the number to any extent would not be to exclude an equal portion of talents, integrity and patriotism ; those who possessed these qualities in the highest degree would still be chosen, and only those, who had least of them, be excluded. The larger any legislative assembly may be beyond the number requisite for the purpose of fair representation, the greater will be the proportion of inexperience and inability, of those who want the capacity or the firmness to judge for themselves, and who therefore yield implicitly to the will of another; the greater the difference between the most eminent and the least so, and of course the more commanding the authority of one or two distinguished men ; the greater will be the variety and influence of personal interests adverse to those of the public, and the motive and opportunity for the bartering of votes and all sorts of intrigue and corruption ; and the more easy it will be for a few individuals to exercise supreme power. Though the state of society among us has hitherto prevented these evils from being intolerable, much inconvenience has arisen from the perpetual fluctuation of the House of Representatives, in consequence of which individuals may procure the passage of laws, to which a majority of that body is decidedly and justly opposed, by watching an opportunity to introduce them when most of the members present are ignorant of their operation or indifferent to it.

* The constitution of Massachusetts, of which it is only modesty to say that in its fundamental provisions it is not inferior to that of any state in the union, was written by *John Adams*. His arguments in favour of it, and particularly of the organization of the senate, may be learned from the sixth letter in the third volume of his defence of the American Constitutions. All who would understand our present system should read those arguments, and it behoves him who wishes to subvert it, to begin his task by refuting them. When this is done, it will be time enough for the good citizens of this Commonwealth to believe, that the constitution adopted by their fathers, and under which they have enjoyed perfect liberty for forty years, is radically aristocratic and oppressive, or that he who wrote it, either from ignorance or malice, betrayed the cause of the people.

The excessive number of the members of this body is a necessary consequence of adhering to our ancient system of representation. By our Provincial Charter every town was entitled to send two delegates to the General Court; but this regulation was soon altered so as to allow only one delegate to towns containing thirty freeholders, two to those containing one hundred and twenty, and four to Boston alone. Towns containing less than thirty freeholders might unite to choose a delegate. In this mode the equality of these corporations was in the main preserved, by sacrificing the equal rights of the citizens. When the revolution took place the towns retained their former organization, and exercised the supreme power, seeming to think that it reverted to them as corporations on the dissolution of the government, and not to the body of the people. Hence delegates from these bodies constituted the Provincial Congress, and afterwards the House of Representatives, who with a council appointed by themselves exercised legislative authority, so that at the time when our constitution was formed, the Commonwealth was nothing more than a confederation of sovereign towns, and a number of the smallest, containing together a very inconsiderable portion of the property or population of the state, might choose a majority of all the officers of government elected by the people. Long habituated to this unequal system, many were more jealous of the dignities and prerogatives of their respective towns, than of their own rights and liberties as men. The inhabitants of one town, for instance, when the constitution was offered for their acceptance, demanded that instead of requiring any property as a qualification of electors, the right of voting should be given to 'every male citizen, who was a friend to the independence of the state, and of sober life and conversation, *to be certified by the selectmen.*'

The convention deeming it expedient, perhaps at that time necessary, to adhere to the established usage of allowing each town to send a representative, but at the same time determined to give every citizen an equal voice, and having assumed one hundred and fifty as the number which should in future authorize the election of one delegate, adopted the only rule for their increase which is consistent with the equal representation of the people. If the number of inhabitants in any town were simply to be divided by one hundred and

fifty in order to ascertain how many representatives it should send, there might remain a surplus of any number less than one hundred and fifty ; and these remainders must be taken to be on an average seventy-five. Suppose then ten towns, in which the surplus numbers taken together amount to seven hundred and fifty, were to be united into one town, they might send five representatives more than before their union ; and thus it is evident that the same number of persons would have more reprsentatives if contained in one large town, than if inhabiting several small ones. To remedy this inequality, seventy-five, the average surplus, is added to the original number, one hundred and fifty, so as to require two hundred and twenty-five additional inhabitants for the choice of every representative more than one. Thus all citizens are, as they ought to be, equally represented ; but all towns are not so, and what good reason can be given why they should be ? Such is the only mode which could be adopted for reconciling the rights of the people with their prejudices, and the inconvenience of a large House of Representatives is its necessary consequence. Nor could we avoid this consequence even by sacrificing altogether our rights as men to municipal prerogative. If each town chose but one delegate, there would be about three hundred, far too many ; yet in that case a hundred and fifty men in one town would have as great a voice in the House of Representatives, as forty thousand in an another ; and every attempt to diminish this monstrous inequality would still increase the number. To remedy this evil some mode of districting the Commonwealth or of classing towns must be adopted, and the only question will be, whether that mode which will establish the most perfect and equal representation of the people be not the best. It is no longer an untried method. Districts are formed for the election of members of Congress, and no mischief or complaint has ever resulted from the system.

As to the number of which the House should consist, we have only to say, that if the framers of our constitution were right in assuming that sixty members are competent to all the purposes of legislation in this Commonwealth, and we believe their opinion has been confirmed by experience, then the utmost number of which that assembly can consist, to avoid the impropriety of containing a number sufficient to form two quorums, is one hundred and nineteen. The first House of

Representatives organized under the constitution of the United States contained about sixty members; and it has not been surpassed in wisdom, integrity, and firmness by any of its more numerous successors.

Objections have been made to the requisition of a certain amount of property as one qualification of voters and of officers of the government. A similar qualification however is required either in the electors or the elected in most of the United States; and in the constitution prepared for Virginia by *Thomas Jefferson* to be submitted to the convention intended to be called there in 1783, it is expressly provided that every voter must possess a freehold of a certain value. There is indeed no civilized society where every person is allowed to vote, and in determining who shall possess this power, as in every other limitation of the rights of individuals, the government must proceed by general rules. Minors are excluded, though there are minors in every respect equal to some men of full age, because as a general rule they have not sufficient discretion. So if it can be predicated of any other class of persons that for want of information or independence, they would in general make a bad use of the right of suffrage, the people may refuse it to them. The justice and propriety of any particular limitation depends on the state of society in the place where it is adopted. If, as this is now constituted among us, it may be asserted that a majority of those not permitted to vote by our constitution for want of sufficient property would abuse the right if they possessed it, then the regulation excluding them does no injury even to the smaller number excluded by its general operation who would make a good use of that right; for if the votes of this minority were by the abolition of the general rule admitted, they would be more than counterbalanced by the larger number of corrupt votes admitted at the same time.

In an agricultural state, where property is distributed with great equality, its possession need not commonly be required as a qualification of voters. But in a commercial or manufacturing country containing the extremes of poverty and wealth, to grant the power of voting to a class of men, most of whom depend on others for subsistence, affords to them a temptation to sell their rights, and to the rich the temptation and opportunity to buy them, thus corrupting both, and giv-

ing the wealthy an undue weight in comparison with the middling classes of society. And after all, the latter, those who do not live without exertion, yet whose exertions are fully competent to their support, who are neither so wealthy as to be tempted to the corrupt purchase of power, nor so necessitous as to be dependent on another's will, are the men whose rights are to be most carefully guarded, and to whose hands the supreme power may be committed most safely. They are in this country the mass of the people, the stay and the strength of the government, the very bones and sinews of the state.

But though every individual on entering society surrenders to the community the right of controlling his person and property by general laws, so far as is requisite in the opinion of the majority for the public good, no man does or can yield to others the right of controlling his conscience: and any provisions which do in fact restrain the consciences of men are oppressive and unjust. Is any part of our frame of government liable to this reproach? It provides that every member of the executive and legislative bodies shall declare his belief of the Christian religion, a general phrase adopted with the intention of including all the inhabitants of the state; and if it actually does so, it is evident that no one can be injured by it. Now suppose the majority of the electors of each of those officers are determined not to vote for any but a Christian,—and no one will deny the right of every voter to be influenced by this consideration if he pleases,—there surely can be no injustice in their expressing this determination beforehand. Until then in some part of the state those empowered to elect a member of the executive or legislative departments prefer one who will not profess his belief of the Christian religion, a case whose occurrence can hardly be supposed, this provision, whatever difference of opinion may exist with regard to its correctness in theory, must be admitted by all to be nominal and inoperative in practice. But why introduce a clause totally inefficient, why make any profession of faith, though it be the faith of the whole people, a part of their political charter? We acknowledge we know no good reason for it; but there it is, and the question is not what should be inserted in a new constitution, but what should be expunged from this. It is one thing to abstain from a profession of Christianity when the occasion does not require it, and another and totally different thing when such

profession has been unnecessarily and officiously made, solemnly and deliberately to retract it. Nothing should be inserted in a frame of government which is not shown to be useful, nothing erased which is not shown to be injurious; and in both cases mere inoperative speculations are unworthy of regard, in comparison with those efficient rules by which principles are brought into practice.

Similar remarks are all we could urge in favour of the single word *Protestant* in the third article of the bill of rights; but the substance of that article admits a different and more complete defence. It authorizes the legislature to enjoin on all subjects an attendance upon the instructions of the public teachers of religion, if there be any on whose instructions they can conscientiously and conveniently attend. It is a solecism to say that this clause violates the rights of conscience, since they are expressly excepted from its operation. Without the concluding words, indeed, it might be unjust and tyrannical, but these render it at once sound in principle and nugatory in practice.

But the most important and useful provision of this article, is that which directs the legislature for the purpose of 'securing the good order and preservation of the government, to require towns, parishes, precincts, &c. to make suitable provision, at their own expense, for the worship of God and the maintenance of public teachers of piety, religion, and morality; provided that these several bodies shall at all times have the exclusive right of electing their respective teachers, and of contracting with them for their support and maintenance.' Is this a restraint upon the conscience of any man? On the same principle that the constitution empowers the legislature to command military musters or town meetings; it may also authorize them to require the citizens to assemble for any purpose whatsoever which may be conducive, in the opinion of a majority of the people, to the public safety, and which does not infringe the rights of conscience. It is manifest that those who choose their own teacher, that is the majority in every parish, have no ground to complain that their rights are infringed. But the minority, who cannot conscientiously hear him, are not they injured? How?—They are *not* required to hear him; nor can it be an injury to them that doctrines, which they do not believe, are listened to by others, who do believe them. But then they are

obliged to pay.—Ay, this is very apt to wound tender consciences.—But seriously, it is said, to pay for the dissemination of tenets which in their opinion are false, and must drag to everlasting perdition all who embrace them. Here lies the fallacy of the whole objection. They do not pay for the dissemination of any particular tenets, nor to promote the happiness or the misery of men in another world, but to render them better citizens in this; 'to secure the good order and preservation of the government.' The constitution has no other object; it deems it entirely indifferent what system is adopted, and therefore gives all the members of each parish an equal voice in determining whom and what they will hear, which, of course, leaves the decision with the majority.

It is urged, however, that the burden is unequal, and different individuals, paying the same tax, do not receive the same equivalent, since only those who attend enjoy the benefit of the instruction. This is a strange objection in the mouths of those who urge it. According to them, this benefit possessed by others, this equivalent, of the want of which they complain, is neither more nor less than guidance on the road to ruin and instructions how to attain eternal misery. The true answer, however, is, that the equivalent proposed by the government for this tax is not the mere religious improvement or the future happiness of those who attend public worship, but the security which society derives from the establisment of institutions, where those who can conscientiously attend may be periodically and frequently reminded of their duties and their accountableness as moral agents; and this security is equally enjoyed by all.

The establishment of public worship at the expense of the community is justified by the same reasons as that of public schools; indeed churches, so far as they are civil institutions, may be considered as schools for the adult. All the inhabitants of a school district are obliged to pay a tax for educating children, though the choice of a teacher and of the system to be pursued depends on the will of a majority alone. The minority may disapprove of the man or the system selected; some may think with Anacharsis Klootz that any education is a violation of the laws of nature, and that man has as much right to grow up without restraint as other animals, the obvious consequence of which would be to make him resemble them; some may insist that corporal punish-

ment ought never to be inflicted : and others again deeming every text of scripture a literal rule of conduct, may really have conscientious scruples about sparing the rod ; yet if for these or any other reasons they refrain from sending their children to the public schools, they are not therefore exempted from contributing to the support of them. Of two men paying the same tax, one may be a solitary and hopeless old bachelor, and the other the father of a New England family sending his ten children to school every morning. Yet here is no injustice ; the difference arises from circumstances, for which the Commonwealth is not responsible, and is merely incidental to the main object of the law,—the peace and security of society, which is an equal benefit to all. Were these ten boys, for want of education, to grow up rogues, they would be quite as likely to plunder the old bachelor as any other man.

The oath abjuring the authority of every foreign potentate has been objected to, in our opinion unjustly, as a violation of the rights of Roman Catholics. The man who thinks himself bound to obey the dictates of a foreign sovereign ought not be a magistrate among a free people, who must be exempt from the control, direct or indirect, of every earthly power not established by themselves. By complying, in the administration of the government, with the commands of a stranger, whether for conscience sake or from any other motive, he infringes the rights of his constituents and the fundamental principles of liberty. That the object of this oath was to renounce a principle inconsistent in its tendency with the independence of the state, and not to condemn the merely speculative doctrines of the Catholic religion, is evident from the instructions given to the committee who reported it. They were directed ' to form a declaration or test, wherein every person, before he takes his seat as a representative, senator, or governor, or enters upon the execution of any important office or trust in the Commonwealth, shall renounce every principle (whether it be Roman catholic, Mahometan, deistical, or infidel) which has any the least tendency to subvert the civil or religious rights established by this constitution.' When we consider that *Samuel Adams* was one of this committee, we shall not wonder at the energetic and almost indignant language in which every thing like foreign control over the citizens of this Commonwealth is abjured.

But though this oath is perfectly defensible upon principle, we should not regret its erasure, since its length renders it really inconvenient, and the dangers against which it is designed to guard are at this day altogether imaginary.

The utility of a Court of Chancery, and the propriety of making it entirely independent of any court of law, were amply discussed in our last number. To complete the system and prevent a clashing of jurisdictions, a Court of Errors should perhaps be established, to which an appeal may lie both at law and in equity; and this ought to be as stable and independent in its structure as the tribunals, whose judgments it revises. We fear, however, that no definite plan for the accomplishment of this object can be formed, which would receive, at present, the approbation of the people; and that they must suffer a little longer the inconveniences necessarily resulting in a wealthy and commercial community from the want of an equitable jurisdiction, before they will consent to make so great a change in our judicial system, as would be requisite in order to establish one on a proper footing.

It is of the utmost importance to provide some mode of making future amendments in the constitution. This will obviate the necessity of deciding immediately those questions on which a great diversity of opinion prevails, and be a pledge of peace and unanimity in the convention. Should some new and important provision be recommended, and be found to excite the strenuous and decided opposition of a considerable portion of the public, it may be deferred, and introduced when its utility is better understood. If there be any existing article which some deem beneficial, and all acknowledge to be harmless in its present application, but from which we apprehend some possible inconvenience hereafter, it may remain to be removed when the danger is more distinctly and more generally perceived. As the object of a constitution is to limit and control the several branches of government, the power of changing it ought never to be entrusted to the government itself, but retained, as far as it can be done, in the hands of the people. Even the unanimous vote of the legislature ought not to change it, for however they might differ on other subjects, the members might very naturally be unanimous in wishing to remove every restraint on their own power; and might render our constitution mere waste paper, and assume the same su-

premacy as the British Parliament, which, under pretence of being omnipotent, has repeatedly degraded its high character by passing bills of attainder, and *ex post facto* laws, thus outraging the plainest principles of nature and reason, which require that no act of the meanest moral agent should ever be punished in any other manner than according to standing laws made and promulgated before its commission.

The utmost authority, which can safely be delegated to the General Court is that of proposing amendments to the constitution to be ratified or rejected by the people in their primary assemblies. But if this mode be adopted, and nothing more than a bare majority of the votes be required for their ratification, the government might watch an opportunity when the people were lulled into indifference, or blinded by some momentary passion or prejudice, to obtain the extension of its power; and it would be careful never to propose any alteration, which could tend to diminish it. Or should the government propose amendments by a simple majority, the people would be harassed with every fluctuation of party by repeated propositions to change the constitution, and in this way their opinion of its stability, in which that stability itself consists, would be greatly shaken. By requiring the concurrence of two thirds of both branches of the legislature and two thirds of the people in every amendment, we should be sufficiently secure against any undue augmentation of the powers of government. This is analogous to the provision in the constitution of the United States, which requires the assent of two thirds of both houses of Congress and three fourths of the states to any amendment. But if experience should show the powers already given to the legislature to be too extensive, we should have no fixed remedy, for a proposition to diminish them can never be expected to come from that body itself, but must originate in some other assembly. Hence some may think it necessary to provide a mode of calling future conventions, such a mode as shall prevent their being called lightly or hastily. Perhaps the best would be to establish as a general rule the plan adopted by our constitution for a particular year; to require that the question whether a convention shall be holden be periodically or at the will of the legislature submitted to the people, and that two thirds of the votes shall be deemed to decide it in the affirmative.

It has been said that to require two thirds of the votes in any case interferes with the right of the majority to decide every question. But when the rule is established by the majority itself, this is not so. Any person may wish some particular amendment to be made in the frame of government with the consent of two thirds of his fellow citizens and not without it. He may think the stability produced by requiring this number in all cases to be more beneficial than the amendment contemplated by him, whatever it be; and if one man may hold this opinion, a majority may do so too. It is but a voluntary condition of their own vote. We will that there be a convention if two thirds of the votes are in favour of it, otherwise not. Why may not this be the will of the people; and if it be, why may they not express and enforce it? It is urged, however, that if a majority are competent to establish the rule, a majority may at any time repeal it, and will do so whenever it interferes with their wishes. Experience does not warrant this assertion. It is common in legislative assemblies to adopt certain standing rules, and provide that they shall not be dispensed with unless by the consent of two thirds of the members. A majority may repeal this provision in order to obtain some object, to which two thirds will not consent, but they never do so. So in many social and literary societies no new member can be admitted, if there be a single vote against him; yet the majority do not, in fact, deprive individuals of the right of veto, for the purpose of admitting some favourite.

The rule is not designed to restrain the deliberate will of the people, but to make them deliberate; to interpose a pause between the purpose and the execution, and remind them that they should not sacrifice the security and permanence of their public institutions to the wishes of a moment. Admitting that the majority may abolish the constitution and the rule together, they will not do it. A people who have deliberately and publicly laid down this limitation of their conduct; if they have any regard for the opinions of mankind, or any respect for themselves, will not overleap it. However, therefore, it may be urged in speculation that such a rule can have no effect, because it may at any time be abrogated, we know that in fact it has an effect, and an admirable one. It is glorious to see the majority of a free people, in all the heat of political contest, or flushed with

recent victory and conscious of uncontrollable power, folding their hands and bowing their heads before the majesty of the laws, which themselves have established.

It has been suggested that those who are or expect to be members of the General Court ought not to be chosen delegates to the convention, because their interest is in some respects adverse to that of the people, and might warp their judgments, though it should not shake their integrity. They may desire to destroy the present organization of the Senate so as to prevent the two houses from controlling each other effectually, and thus remove this restraint on the power, which they hope to wield. They may be disposed to make the legislature very numerous, in order to be more secure of a seat in it. They may wish to confer upon it, as far as possible, the power of changing the constitution, that the means of extending their authority may be in their own hands. The danger is perhaps exaggerated; but we admit these suggestions to be so far reasonable, that of two individuals in all respects equally qualified, he should be preferred who is not likely to hold a seat in the legislature; though this certainly cannot be deemed a sufficient motive for the peremptory exclusion of men distinguished by their integrity, abilities and independence of character.

ART. XVIII.—*Percy's Masque, a Drama, in five acts. From the London edition, with alterations.* New York, C. S. Van Winkle, 1820. 12mo, pp. 150.

THIS work appears, from the title page, to be printed from a London edition, but we learn that the author is a countryman of our own. We are glad to meet with so respectable a production in this department of literature from the pen of a native writer; indeed we are pleased to light upon any modern tragedy in the English language so well worthy of notice. Whatever may be the cause, it is certain that late attempts in that species of composition, with few exceptions, have failed. Few writers, indeed, of any note have ventured upon it, and it must be confessed that the discouragements are many and serious. In the other kinds of poetical composition, the author writes for those whose minds have many habits in common with his own—he writes to the contemplative, to the